5349

SUPREME COURT OF THE UNITED STATES.

No. 187.

EBER B. WARD, PLAINTIFF IN ERROR,

vs.

PAUL BABCOCK, CHARLES MACKIN, JESSE L. COCHRAN, CHARLES S. SLAUSON, CHARLES G. BARRETT, PARKER P. CLARK, IRA A. LIBBY, WILLIAM KING, BAINBRIDGE S. CLARK, AND DARIUS W. WARREN.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MICHIGAN.

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GIDEON, Print.

UNITED STATES OF AMERICA, *ss.*

The President of the United States of America to the Judges of the Circuit Court of the United States for the seventh circuit and district of Michigan, greeting:

Because in the record and proceedings, as also in the rendition of judgment in a plea which is in the said circuit court before you, between Paul Babcock, Charles Mackin, Jesse L. Cochran, Charles S. Slawson, Charles G. Barrett, Parker P. Clark, Ira A. Libby, William King, Bainbridge S. Clark, Darius W. Warren, and Eber B. Ward, a manifest error hath happened, to the great damage of the said Eber B. Ward, as by his complaint appears; and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the law and custom of the United States ought to be done.

Witness the Honorable Roger B. Taney, Chief Justice of the said Supreme Court of the United States, this sixth day of July, in the year of our Lord one thousand eight hundred and fifty-eight, and of the independence of the United States the eighty-third.

[L. S.]

JNO. WINDER,
Clerk of said Circuit Court of the United States for the Seventh Circuit and District of Michigan.

The execution of the within writ appears by the record hereto annexed.

JNO. WINDER,
Clerk Circuit Court U. S., District of Michigan.

Citation.

UNITED STATES OF AMERICA, *ss.*

To Paul S. Babcock, Charles Mackin, Jesse L. Cochrane, Charles S. Slauson, Charles G. Barrett, Parker P. Clark, Ira A. Libby, William King, Bainbridge S. Clark, Darius W. Warren, greeting:

You are hereby cited and admonished to be and appear at a Su-

preme Court of the United States, to be holden at Washington, on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the seventh circuit and district of Michigan, wherein Eber B. Ward is plaintiff and you are defendants in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice done to the parties in that behalf.

Witness the Honorable Roger B. Taney, Chief Justice of the Supreme Court of the United States, this sixth day of July, in the year of our Lord one thousand eight hundred and fifty-eight.

ROSS WILKINS,
One of the Judges of the Circuit Court of the United States for the Seventh Circuit and District of Michigan.

DISTRICT OF MICHIGAN, *ss.*

Due legal and personal service of the within citation upon the defendants in error within named is hereby admitted.

Dated Detroit, July 7th, A. D. 1858.

R. P. TOMS,
Att'y for Defendants in Error.

Bond in Error.

Circuit Court of the United States for the seventh circuit and district of Michigan.

EBER B. WARD
vs.
PAUL BABCOCK, CHARLES MACKIN, JESSE L. COCHRANE, Charles S. Slauson, Charles G. Barrett, Parker P. Clark, Ira A. Libby, William King, Bainbridge S. Clark, and Darius W. Warren. } In Error.

Know all men by these presents that we, Eber B. Ward, Charles H. Waterman, and Jerome P. Clark, Stewart W. McDonald, and Duncan Stewart are held and firmly bound unto the above named Paul Babcock, Charles Mackin, Jesse L. Cochrane, Charles S. Slauson, Charles G. Barrett, Parker P. Clark, Ira A. Libby, William King, Bainbridge S. Clark, and Darius W. Warren in the sum of eight thousand dollars, to be paid to the said Paul, Charles, Jesse L., Charles S., Charles G., Parker P., Ira A., William, Bainbridge S., and Darius W., their executors, administrators, or assigns: to which payment well and truly to be made we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents. Sealed with our seals, and dated at Detroit, in said district, this sixth day of July, A. D. 1858.

Whereas the above named Eber B. Ward hath prosecuted a

writ of error to the Supreme Court of the United States to reverse the judgment rendered by the said circuit court of the United States against the said Eber B. and in favor of the said Paul, Charles, Jesse L., Charles S., Charles G., Parker P., Ira A., William, Bainbridge S., and Darius W., on the twenty-eighth day of June, (A. D. 1858,) in the year of our Lord one thousand eight hundred and fifty-eight: Now, therefore, the condition of this obligation is such, that if the above named Eber B. shall prosecute his said writ to effect, and answer all damages and costs if he shall fail to make good his plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

E. B. WARD, [L. S.]
C. H. WATERMAN, [L. S.]
J. P. CLARK, [L. S.]
STEWART McDONALD, [L. S.]
DUNCAN STEWART. [L. S.]

Sealed and delivered in presence of—
ALFRED RUSSELL,
HENRY R. MIZNER.

DISTRICT OF MICHIGAN, *ss.*

I hereby approve of the sureties in the within bond and the sum for which it is given.

ROSS WILKINS,
U. S. District Judge for the District of Michigan.

Pleas before the Judges of the Circuit Court of the United States for the seventh circuit and district of Michigan, at the district court-room, in the city of Detroit, in said district, of the term of June, in the year of our Lord one thousand eight hundred and fifty-eight, in the cause between Paul Babcock, Charles Mackin, Jesse L. Cochrane, Charles S. Slauson, Charles G. Barrett, Parker P. Clark, Ira A. Libby, William King, Bainbridge S. Clark, and Darius W. Warren, Plaintiffs, vs. Eber B. Ward, Defendant.

DISTRICT OF MICHIGAN, *to wit.*

Be it remembered that on the fourth day of May, in the year of our Lord one thousand eight hundred and fifty-eight, the said plaintiffs, by R. P. Toms, their attorney, came into the court aforesaid, before the judges thereof, according to the statute and the rules of said court, and filed their declaration against the said defendant, which said declaration is in the words and figures following, to wit:

Declaration.

The Circuit Court of the United States for the district of Michigan—Of the fourth day of May, one thousand eight hundred and fifty-eight.

DISTRICT OF MICHIGAN, *ss.*

Paul Babcock, Charles Mackin, Jesse L. Cochrane, Charles S. Slauson, Charles G. Barrett, Parker P. Clark, Ira A. Libby, William King, Bainbridge S. Clark, and Darius W. Warren, who are citizens of the State of New York, by R. P. Toms, their attorney, come and file this their declaration as commencement of suit, and complain of Eber B. Ward, who is a citizen of the State of Michigan, of a plea of trespass on the case upon promises: for that whereas one Charles H. Waterman heretofore, to wit, on the twenty-eighth day of November, in the year one thousand eight hundred and fifty-seven, at Detroit, to wit, at the city of Detroit, in the district of Michigan aforesaid, and within the jurisdiction of this court, made and signed his certain promissory note in writing, bearing date the day and year aforesaid, and thereby, then and there, by the name of C. H. Waterman, promised to pay to the order of the said defendant, by the name of E. B. Ward, three months after the date thereof, the sum of two thousand nine hundred and sixty-two and $\frac{11}{100}$ dollars, with interest at ten per cent., at the Savings, Detroit, (at the Savings Bank in the city of Detroit meaning,) for value received, and then and there delivered the said note to the said defendant; and the said defendant, to whom or to whose order the payment of the said sum of money in the said note specified was by the said Charles H. Waterman directed to be made, after the making of the said note, and before the payment of the said sum of money therein specified, to wit, on the day and year and at the place aforesaid, endorsed the said promissory note, and thereby, then and there, ordered and appointed the said sum of money therein specified to be paid to the said plaintiff, and then and there delivered the said note so endorsed to the said plaintiffs. And the said plaintiffs aver, that afterwards, when the said note became due and payable, according to the tenor and effect thereof, to wit, on the third day of March, in the year of our Lord one thousand eight hundred and fifty-eight, at the said Savings Bank, in the city of Detroit aforesaid, the said note so endorsed, as aforesaid, was presented for payment thereof; and payment of the said sum of money therein specified was then and there duly required, according to the tenor and effect of the said promissory note; but neither the said Charles H. Waterman, nor any other person or persons, on behalf of the said Charles H. Waterman, did or would at the said time, when the said promissory note was presented and shown for payment thereof, as aforesaid, or at any time before or afterwards, pay the said sum

of money therein specified, or any part thereof, but wholly neglected and refused so to do; of all which said several promises the said defendant afterwards, to wit, on the day and year last aforesaid, in the city of Detroit aforesaid, had notice; by means whereof, and by force of the statute in such case made and provided, the said defendant then and there became liable to pay to the said plaintiffs the said sum of money in the said promissory note specified when he, the said defendant, should be thereunto afterwards requested; and being so liable, the said defendant, in consideration thereof, afterwards, to wit, on the day and year last aforesaid, in the city of Detroit aforesaid, undertook and then and there faithfully promised the said plaintiffs well and truly to pay unto the said plaintiffs the said sum of money in the said promissory note specified when he, the said defendant, should be thereunto afterwards requested.

And for that whereas the said defendant afterwards, to wit, on the first day of May, in the year of our Lord one thousand eight hundred and fifty-eight, was indebted to the said plaintiffs in the sum of ten thousand dollars for the price and value of goods then and there sold and delivered by the plaintiffs at request, and in the sum of ten thousand dollars for the price and value of the work then and there done, and materials for the same provided by the said plaintiffs for the said defendant at his request, and in the sum of ten thousand dollars for money then lent by the said plaintiffs to the said defendant at his request, and in the sum of ten thousand dollars for money then paid by the said plaintiffs for the use of the said defendant at his request, and in the sum of ten thousand dollars for money then received by the said defendant, to and for the use of the said plaintiffs, and in the sum of ten thousand dollars for money found to be due from the defendant to the plaintiffs, on an account then stated between them; and whereas the said defendant afterwards, on the day and year aforesaid, in consideration of the premises, respectively then promised the said plaintiffs to pay them the said several sums of money respectively on request, yet the said defendant hath disregarded his said promises and undertakings, and hath not paid any of the said sums of money above demanded or any part thereof, to the plaintiff's damage ten thousand dollars, and therefore they bring suit, &c.

R. P. TOMS,
Plaintiff's Att'y.

Plea.

In the Circuit Court of the United States for the seventh circuit and district of Michigan.

PAUL BABCOCK, CHARLES MACKIN, JESSE L. COCHRANE, Charles S. Slauson, Charles G. Barrett, Parker P. Clark, Ira A. Libby, William King, Bainbridge S. Clark and Darius W. Warren,
vs.
EBER B. WARD.

DISTRICT OF MICHIGAN, *ss.*

And the said Eber B. Ward, by Towle, Hunt & Newberry, his attorneys, comes and defends the wrong and injury, when, &c., and says that he did not undertake and promise in manner and form as the said plaintiffs in their suit hath above thereof declared against the said defendant, and of this he puts himself upon the country; and the said plaintiffs doth the like.

TOWLE, HUNT & NEWBERRY,
Att'ys for Defendant.

Award of Venire.

Therefore to try the issue above joined, let a jury come thereof, by whom, &c., and who neither, &c., because as well the said plaintiffs as the said defendant have put themselves upon that jury.

Verdict.

And the jurors of that jury, of whom mention is made, to wit, Benjamin Pratt, Daniel Thompson, Nathaniel Champ, Amos Hamlin, Moses Hussey, John Barbour, McDonald Frazer, Edward G. Morton, Hugh O'Beirne, John Askin, Joshua Howard and William Walker, being elected, tried, and sworn, to try the issue joined in this cause, after hearing the evidence adduced and receiving the charge of the court, say they find that the said defendant did undertake and promise, in manner and form as the said plaintiffs have above in their said declaration alleged against him the said defendant, and they assess the plaintiff's damages on occasion thereof at the sum of three thousand one hundred and thirty dollars and seventy-two cents.

Judgment.

Therefore it is considered that the said plaintiffs, Paul Babcock, Charles Mackin, Jesse L. Cochrane, Charles S. Slauson, Charles G. Barrett, Parker P. Clark, Ira A. Libby, William King, Bainbridge S. Clark and Darius W. Warren, do recover against the said defendant, Eber B. Ward, the said sum of three thousand one hundred and thirty dollars and seventy-two cents, their damages on occasion of the premises, assessed by the jury aforesaid in form

aforesaid; and also the further sum of thirty-four dollars and six cents for the costs and charges of the said plaintiffs by them about their suit in this behalf laid out and expended, which said damages, costs and charges in the whole amount to the sum of three thousand one hundred and sixty-four dollars and seventy-eight cents now here adjudged to the said plaintiffs, and with their assent.

And the said defendant in mercy, &c. Judgment signed June twenty-eighth, in the year one thousand eight hundred and fifty-eight.

(Signed) JOHN WINDER,
Clerk.

UNITED STATES OF AMERICA, *ss.*

Circuit Court of the United States for the district of Michigan, ss.

PAUL BABCOCK, CHARLES MACKIN, JESSE L. COCHRANE, Charles S. Slauson, Charles G. Barrett, Parker P. Clark, Ira A. Libby, William King, Bainbridge S. Clark, and Darius W. Warren,
vs.
EBER B. WARD.

I, John Winder, clerk of said court, do hereby certify the above and foregoing to be a true copy of the original record of judgment in the above entitled cause; the same having been carefully compared by me with such original, is a correct transcript therefrom, and of the whole of such original record.

In testimony whereof I have hereunto subscribed my name, and affixed the seal of said court, at Detroit, this first day of October, in the year of our Lord one thousand eight hundred and fifty-eight, and of our independence the eighty-third.

JNO. WINDER, *Clerk.*

DISTRICT OF MICHIGAN, *ss.*

I, Ross Wilkins, judge of said court, do hereby certify that John Winder is clerk of the circuit court of the United States for the district of Michigan; that the seal annexed to the above certificate signed by him is the seal of said court; and that the above attestation is in due form.

In testimony whereof I have hereunto signed my name officially, this first day of October, A. D. 1858.

ROSS WILKINS.

Supreme Court of the United States.

EBER B. WARD
vs.
PAUL BABCOCK, CHARLES MACKIN, JESSE L. COCHRAN, Charles S. Slauson, Charles G. Barret, Parker P. Clark, Ira A. Libby, William King, Bainbridge S. Clark, and Darius W. Warren. } In Error.

UNITED STATES OF AMERICA, *ss.*

Of the Term of December, in the year of our Lord one thousand eight hundred and fifty-eight.

Afterwards, to wit, on the first Monday of December, in this same term, before the justices of the said Supreme Court of the United States, at the Supreme Court room in the city of Washington, comes the said Eber B. Ward, by Alfred Russell, his counsel, and says that in the record and proceedings, and also in giving the judgment aforesaid, there is manifest error in this, to wit, that the declaration aforesaid, and the matters therein contained, are not sufficient in law for the said Paul, Charles, Jesse L., Charles G., Parker P., Ira A., William, Bainbridge S., and Darius W., to have or maintain their aforesaid action thereof against the said Eber B. There is also error in this, that the said declaration is not entitled in any court known to the laws of the United States; and there is also error in this, that there is no venue in the said declaration; there is also error in this, that it does not appear in and by said declaration that said defendants in error and plaintiffs below proceeded under any statute, or had any color of law in filing said declaration as commencement of suit; there is also error in this, that it does not appear in and by said declaration that said defendants in error and plaintiffs below entered any rule upon said plaintiff in error and defendant below to plead to said declaration, according to the statute in such case made and provided; there is also error in this, that there is no averment of the citizenship of the said Charles H. Waterman in the said declaration mentioned as the maker of the said promissory note therein set forth; there is also error in this, that it appears in and by said declaration that said plaintiff in error and defendant below promised to pay the said defendants in error and plaintiffs below the said sum of money in the said promissory note specified, as well as the said several sums of money respectively in the common counts of the said declaration set forth, when thereunto afterwards requested, and on request, but that there is no averment or allegation in the breach of said declaration or elsewhere therein, that said plaintiff in error and defendant below was ever requested to pay the said sum of money in the said promissory note specified, or the said several sums of money respectively, in the common counts of the said declaration set forth, by the said defendants in error and plaintiffs below, or any other person or persons; there is also error in this, that by the record aforesaid it appears that the judgment aforesaid, in form aforesaid given, was given for the said Paul, Charles, Jesse L., Charles S., Charles G., Parker P., Ira A., William, Bainbridge S., and Darius W., against the said Eber B.; whereas, by the law of the land, the said judgment ought to have been given for the said Eber B., against the said Paul, Charles, Jesse L., Charles S.,

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Charles G., Parker P., Ira A., William, Bainbridge S., and Darius W. And the said Eber B. prays that the judgment aforesaid, for the errors aforesaid, and other errors in the record and proceedings aforesaid, may be reversed, cancelled, and altogether held for nothing, and that he may be restored to all things which he hath lost by occasion of the said judgment, &c.

ALFRED RUSSELL,
Counsel for Pl'ff in Error.

Filed 31 Dec'r, 1858.